U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 10 2006
WAC 04 204 50639

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an attorney. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

On the Form I-140 petition, the petitioner indicates that he operates his own law office at 5900 Magnolia Avenue, Riverside, California. This same address appears on an unnecessary Form G-28 Notice of Entry of Appearance as Attorney or Representative, on which the petitioner designates himself as his own attorney.

Part 15 of Form ETA-750B, Statement of Qualifications of Alien, instructs the alien to "[l]ist all jobs held during the last three (3) years. Also, list any other jobs related to the occupation." The petitioner listed only two jobs: as a "Legal Columnist (Free)" for *Black Voice News*, from July 2004 to the present, and as a "Volunteer Attorney" for Public Service Law Corporation.

Simultaneously with his Form I-140 petition, the petitioner filed an I-485 adjustment application, including a Form G-325A Biographic Information sheet. This form, which the petitioner signed under penalty of perjury, instructs the applicant to list "applicant's employment last five years," beginning with current employment. The petitioner lists employment as a "lawyer" in Nigeria from 1994 to 2001. The petitioner does not claim any other employment as a "lawyer" on this form; his only claimed employment in the United States is as a "legal writer" for the Law Office [redacted]

The petitioner describes his intended work:

> I intend to be self-employed as an attorney in solo-practice. . . . My areas of specialization will be civil rights, family and immigration law. My services will be dedicated to providing

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[redacted] appears to be the petitioner's brother, Akintunde Samuel Akintimoye.

> legal services to the poor. I plan to devote 50% of my time to the representation of indigent clients on a no-fee or low-fee basis. The other half of my time will be for the representation of fee-paying clients including court appointed cases for indigent clients whose fee is paid by the court.
>
> I work for the Public Service Law Corporation . . . as a volunteer attorney. In this capacity, I render legal advise [sic] to people who seek legal assistance. I also help them prepare their legal documents for filing. I put in several hours every week. . . .
>
> I was appointed as a legal columnist for the Black Voice News. . . . I write legal articles on [a] weekly basis on the U.S. and California constitutional and other legal matters. My goals are to educate the public on their legal rights, warn them about the consequences of disobedience to the law and advance the rule of law. . . .[2]
>
> I have represented at least 25 clients in court since I became a licensed attorney in California in June 2003 on pro bono or low cost basis.

(Emphasis in original.) The bulk of the petitioner's initial filing consists of documentation of various legal cases that the petitioner has handled (26 civil cases and two criminal cases). The petitioner submits two witness letters with his initial filing. [redacted] of Riverside County Superior Court states:

> I am familiar with [the petitioner] because he frequently appears in my courtroom on cases involving divorce, domestic violence, and parentage. He is courteous and professional, and seems to have the best interests of his clients at heart. . . .
>
> [The petitioner] is practicing in the areas of family law, civil rights, and immigration law. In my view the national interest is well-served when an attorney practices responsibly in these fields, especially when he makes his services available to the poor.

Judge Cahraman states that "the records of the California State Bar . . . confirm [the petitioner's] office address as stated on his letterhead." That address is not the petitioner's residential address, and the petitioner did not list a law practice at that address on either the Form ETA-750B or the Form G-325A, both completed more than a year after the petitioner's admission to the California State Bar.

[redacted] supervising attorney for the Public Service Law Corporation, states:

> [The petitioner] comes to this office twice weekly to render legal services to indigent clients. He prepared their pleadings for filing and gives advice. . . .

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[2] We note that the petitioner's status as an H-1B1 nonimmigrant expired January 31, 2004. The petitioner subsequently renewed his nonimmigrant status (as an employee of the Law Offices of [redacted], but at the time he filed the immigrant visa petition on July 9, 2004, the petitioner had been out of lawful status for several months. The Law Office [redacted] had filed an earlier nonimmigrant petition on the petitioner's behalf, in December 2003, but that petition was denied due to abandonment.

> [The petitioner] is one of the very few attorneys carrying out these functions on behalf of the Public Service Law Corporation. I therefore have no hesitation in recommending his immigrant petition for immediate approval on the basis that access to adequate and comprehensive legal service is in the national interest in view of the Equal Protection Clause of the United States Constitution.

While the above witnesses indicate that the petitioner generously donates his time as a *pro bono* attorney, there is no indication as to why the petitioner's activity in this area is more significant than the *pro bono* work of other qualified attorneys. Congress established no explicit blanket waiver for *pro bono* attorneys, and the construction of the statute precludes the possibility of implied blanket waivers. Section 203(b)(2)(B)(ii) of the Act establishes a blanket waiver for certain physicians. This portion of the statute would be redundant if such a blanket waiver were already implied. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987).

We must also consider the scope of the petitioner's work. Pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. *Matter of New York State Dept. of Transportation* at 217, n.3.

For the above reasons, *pro bono* service as an attorney is not, by itself, sufficient grounds for a national interest waiver. The only other activity that the petitioner claims, that is not part and parcel of any attorney's job, is his work as a legal columnist for *Black Voice News*. The petitioner's initial submission includes a single example of his legal writings (an article about gay marriage and domestic partner registration). The publication is not identified, but the petitioner does not claim to have written for any publication other than *Black Voice News*. The record contains no information about the scope of circulation of that publication. If *Black Voice News* circulates only within a small geographic area, or to a very small subscriber base, it is not clear how a weekly column within that publication could have national scope.

On March 9, 2005, the director issued a notice of intent to deny, stating that the evidence submitted with the petition indicates that the petitioner's *pro bono* legal work has a "limited impact" that does not justify a national interest waiver. In response to the notice, the petitioner states:

> Please recall that I stated that I intended to practice law permanently in the United States, not just the state of California. As you requested, please permit me to submit my concrete and specific business plans on how I intent to actualize my intended nationwide practice.
>
> 1. Involvement in civil rights organizations: I am an active member of the National Association for the Advancement of Colored People (NAACP). I intend to join other national civil rights organization[s] in order to help the oppressed get access to justice on a no-fee or low-fee basis. I became a member of the American Civil Liberties Union before submitting my petition. . . .

2. Website: I have developed a website in order to complement the actualization of my legal goals. . . . On my website, I will devote substantial time of my practice to educate people living in the United States on civil rights, immigration and family law. . . .
3. Admission into all federal Courts in the United States: I intend to seek admission to practice before all federal courts in the United States. . . . My practice areas – immigration and civil rights are mainly federal law. (Applicants seeking to practice before federal courts are not required to take any qualifying examination once they have been duly admitted to practice before the highest court of any state in the United States and they are of good moral character.) . . .
4. Recruitment of additional employees and establishment of contact offices in the fifty states of the United States: Right now, I have only one employee working for me. As the volume of my practice increases, I intend to set up contact offices in all the fifty states of the United States and employ paralegals to manage those offices under my full supervision in order to achieve my goal of nationwide pro bono service. I will pursue this goal steadily and gradually.
5. Networking: I am an active member of the American Bar Association, American Trial Lawyers Association and American Immigration Lawyers Association. . . . I stand in a position to bridge the communication gap between attorneys and their African clients. . . . [P]otential American investors in Nigeria will benefit immensely from my free legal advice on Nigerian Law. . . .
6. My involvement with Black Voice News: . . . I had [previously] indicated in [my] petition that I am a legal columnist with the Black Voice News. . . .
7. Lay Minister: I am one of the Lay Ministers in the Redeemed Christian Church of God (R.C.C.G.). . . . **R.C.C.G. has parishes in every state of the United States. I am an official attorney rendering legal services to the vast members of the church all over the United States on pro bono basis**. . . . Pastors, Deacons and Ministers in the United States often seek my legal services for their members who are predominantly Africans on a low-cost or no-cost basis.

(Emphasis in original.) We shall, below, address each of the above arguments in turn.

[redacted]hair of the Legal Redress Committee of the Riverside (California) Branch of the NAACP, states that the petitioner "is an active member" of that committee, who "has proven to be an asset to this committee." [redacted] does not indicate that the petitioner has significantly distinguished himself from other attorneys who likewise give so generously of their time in seeking basic human rights for oppressed or overlooked groups. Like so many of the petitioner's arguments, his connection to the NAACP and other civil rights groups amounts to a general assertion rather than anything specific to him; in this case, the implicit assertion is that *pro bono* legal work for civil rights groups is a significant factor in a request for a waiver. The petitioner has not shown that his work for these groups has had a particularly substantial impact beyond the individual clients whom he personally represents.

With regard to the petitioner's web site, we acknowledge that anyone with access to the World Wide Web could access his site, but the same can be said of millions of other web sites. The record does not indicate that the

petitioner's site draws significant numbers of visitors from outside his immediate geographic area. As the Internet becomes more and more integral to American society and commerce, the fact that the petitioner operates a web site does not distinguish him from countless other attorneys.

As far as practice before federal courts is concerned, the petitioner himself observes that, once an attorney is a member in good standing of the bar of the highest court in any one state, there are no additional specific requirements that the attorney must meet in order to practice before federal courts. This is a general observation, which does not distinguish the petitioner from other attorneys who are cleared to practice before federal courts.

The petitioner asserts that his work will attain national scope as his practice grows and he establishes offices in all fifty states. While such an arrangement would certainly expand the scope of the petitioner's activities, the petitioner offers no evidence to show that this nationwide expansion of his practice is a feasible or realistic goal.

With respect to the "networking" opportunities discussed by the petitioner, membership in large professional associations does not set the petitioner apart from many others in his field. The assertion that he is able to communicate easily with Nigerian clients may be of benefit to those particular clients who are from Nigeria, but we are not prepared to find that an alien's national origin is, itself, a major factor in approving a national interest waiver. Every nation on earth produces attorneys who can argue that their cultural background ideally suits them to handle legal business involving their country of origin and immigrants therefrom.

Relating to his efforts as a writer, the petitioner submits a letter addressed to him, [redacted] associate publisher of *Black Voice News*. This letter confirms the petitioner's "appointment as a Legal Columnist and Advisor," whose "services will be free." [redacted] letter adds little substantive new information to the record, and contains no indication that the publication circulates outside of a small local area.

The petitioner's work as a lay minister is entirely separate from his legal work and need not be considered here. With regard to legal work arising from his church membership, the petitioner provides no evidence to support his claim to be "an official attorney rendering legal services to the vast members of the church all over the United States on pro bono basis." [redacted] of Livingspring Christian Center, Atlanta, Georgia, praises the petitioner as a dedicated advocate for those who are unable to afford needed legal services. [redacted] states "I greatly believe my church members and the members of the Redeemed Christian Church of God in the entire United States will benefit from the legal expertise and selfless service of [the petitioner] at little or no cost." Pastor [redacted] does not indicate that the petitioner has already had such an impact. He indicates that he and the petitioner studied law together and have known each other since 1989. This pre-existing personal relationship appears to be the principal motivation behind the letter; the letter certainly does not establish that the petitioner's professional reputation stretches as far as Atlanta, or that the petitioner is in any way an "official attorney" of the R.C.C.G. either locally or nationwide.

The director denied the petition in an 11-page decision that discusses the petitioner's evidence and arguments in detail. The director acknowledged the petitioner's "altruistic motives" and the intrinsic merit of the practice of law, but found that the petitioner had not persuasively demonstrated the national scope of his work, or that it was in the national interest to ensure (by means of a waiver) that the petitioner, rather than a qualified U.S. worker, continued doing the petitioner's work. The director found that simply being an attorney who performs *pro bono*

work for indigent clients or civil rights groups is not sufficient grounds for a national interest waiver. With regard to the beneficiary's long-term goals, the director stated: "At best – absent a proven track record and concrete evidence that these things are feasible ends for which [sic] he has the means to achieve – the petitioner's projections and promises do not appear to have solidified beyond the stage of 'wishful thinking.'"

On appeal, the petitioner contends that the decision "was against the weight of evidence on record," but does not elaborate on this point except to state that he must only show a "preponderance of evidence" rather than establish his claim "beyond a reasonable doubt." The preponderance of evidence in this proceeding points to a legal practice with negligible reach beyond individual clients at the local level. Vague plans to establish a nation-spanning network of law offices are not "evidence" and do not go toward establishing a preponderance thereof.

When arguing the national scope of his work, the petitioner discusses *Matter of New York State Dept. of Transportation*. The petitioner acknowledges that the precedent decision specifically singles out *pro bono* attorneys as an example of meritorious work that is "attenuated at the national level," but the petitioner argues that this passage applies "only to attorneys whose pro bono work have [sic] only a local impact. . . .The relevant inquiry is whether the pro bono activity of the attorney is national in scope either geographically, or whether his local activity has a national impact." We do not disagree with this reasoning, but the burden remains on the petitioner to establish national impact.

The petitioner states, correctly, that attorneys are statutorily eligible to apply for the waiver, and that the law "cannot now be construed to exclude attorneys permanently." *Matter of New York State Dept. of Transportation* does not mandate the denial of every petition seeking a waiver for an attorney, and that precedent decision never states that *pro bono* work automatically disqualifies an attorney. Rather, the decision indicates that participation in pro bono work is not, by itself, a strong factor in favor of approval.

The petitioner cites two unpublished appellate decisions that, the petitioner asserts, support his argument. These unpublished decisions have no force as precedent and thus are not binding relative to the present proceeding. The first cited decision is from 1993, five years before *Matter of New York State Dept. of Transportation* was published as a precedent decision. Thus, even if the 1993 decision constituted binding precedent (which it did not), it would have been superseded by the 1998 publication of *Matter of New York State Dept. of Transportation*.

The other cited decision is from 2003. In that decision, the petitioner asserts, the AAO found that the beneficiary's work was national in scope because the employer sought to utilize the beneficiary's services on a national project. The beneficiary in that proceeding was not an attorney, *pro bono* or otherwise. The beneficiary was an executive of a non-profit organization that was part of an already-established national network. Credible witnesses attested to that beneficiary's "unparalleled track record" and indicated that the beneficiary's local work formed a model for future efforts in other cities. Documentary evidence supported these assertions. The petitioner has established no credible parallel between the 2003 decision and his own petition. If the beneficiary in the 2003 proceeding had been a self-employed alien with no demonstrable accomplishments of any significance, and who offered only vague assertions that he planned to expand his business across the country, the AAO would have dismissed the appeal.

The petitioner argues that the letter from [redacted] of the NAACP "actually indicated that I have served and will continue to serve other regions of the U.S. from my base in California, thus establishing that my pro bono legal activity has a national impact." We can find nothing in [redacted] letter to support this assertion. The petitioner quotes a passage that reads: "The Riverside Branch of the Legal Redress Committee frequently receives complaints from African Americans and other minorities in the [sic] Riverside County as well as from individuals in other regions." [redacted] does not identify these "other regions"; they could be neighboring counties. The record offers no reason for us to believe that NAACP Legal Redress Committees are so few and far between that clients around the nation turn to the Riverside Branch for assistance.

The petitioner states that the director failed to consider the content of the petitioner's web site, which "attracts a lot of persons from all over the world." The petitioner, on appeal, submits printouts from that web site, accessed June 14, 2005. The home page indicates: "You are visitor number 270 since May 2005." Subsidiary pages show smaller numbers of visitors, ranging from six to 105. The petitioner does not demonstrate that 270 visits to a web site over the course of two to six weeks is "a lot" when compared to other attorneys' sites. The petitioner also fails to establish that there were 270 different visitors, rather than repeat visits by a smaller number of individuals. He also does not explain how he knows that these visitors were "from all over the world" rather than from the vicinity of his law practice.

Furthermore, the printouts include several dated articles. The earliest article is dated April 8, 2005, around the time that the petitioner responded to the director's March 9, 2005 notice of intent to deny. There is no evidence that the web site existed before April 2005. It appears, therefore, that the petitioner created the web site in direct response to the notice of intent to deny, in an attempt to establish the national scope of his law practice. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service (now CIS) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. If the petitioner's law practice lacked national scope at the time he filed the petition on July 9, 2004, then the petitioner's subsequent creation of a web site cannot retroactively establish national scope as of the filing date.

The petitioner states: "The Director did not properly evaluate my claim that I have been providing pro bono legal services to the members of, and the clergy in and outside the Redeemed Christian Church of God." With no evidence, the petitioner's claim is just that, a claim, rather than a demonstrated fact. The petitioner asserts that Pastor Igbinijesu's latter corroborates that claim, but the pastor states only his subjective belief that the petitioner "will" benefit members of the church. There is no evidence that the petitioner has already done so.

The petitioner states that the director did not give sufficient consideration to a criminal case in which the petitioner "reduced three felony charges against a criminal defendant . . . to two misdemeanors for a very low fee of $1000.00." It is a defense attorney's sworn duty to act in the interest of his clients. The petitioner does not explain how his involvement in what appears to be a plea bargain distinguishes him in any way from thousands of other criminal defense attorneys in the United States. With regard to the purportedly low fee, the director had already discussed the petitioner's *pro bono* work in general; there is no apparent reason to focus on one specific case.

The petitioner submits a letter from [redacted] mayor of Riverside, California. Mayor [redacted] simply lists claims and evidence already considered above; his letter adds little of substance to the record.

The petitioner also submits documentation showing that the California State Legislature has declared: "The provision of pro bono legal services is the professional responsibility of California attorneys as an integral part of the privilege of practicing law in this state." The documentation also shows that California law requires attorneys to perform a certain amount of *pro bono* service as a condition for contracts with the state. On December 9, 1989, the Board of Governors of the State Bar of California adopted a resolution that "[u]rges all attorneys to devote a reasonable amount of time, at least 50 hours per year," to *pro bono* legal work. This evidence simply demonstrates that both lawyers and lawmakers in California consider *pro bono* work to be not an extraordinary service that elevates some attorneys above their peers, but rather a professional duty that every responsible attorney ought to undertake.

In general, the petitioner reads into his evidence significance that simply is not there, and he makes utterly unsupported claims, such as the assertion that "the articles I posted on my website . . . have received worldwide readership." If the petitioner has evidence of this "worldwide readership," he has not submitted or even described this evidence. If the petitioner has no evidence of any "worldwide readership," then he has no reasonable basis to make such a claim. The petitioner appears to be convinced that his work has had a significant impact nationally, perhaps globally, but the record fails to offer any indication that this is in fact the case.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.